

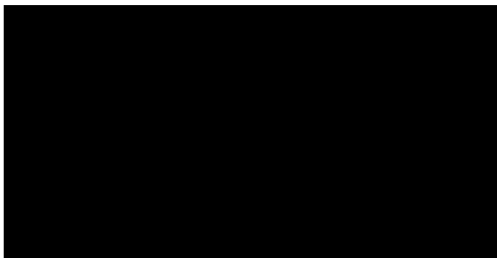
Latit Sources & Methods

INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

WASHINGTON, D.C. 20408

MAY 28 1976

ATINTL



**OSD, DOS
Declassification/Release
Instructions on File**

Enclosed herewith are comments and opinions from all members of the Interagency Classification Review Committee (ICRC), except the CIA representative, regarding the proposed "Interim Intelligence Community Guidelines for Declassification or Extended Classification of Information Concerning Intelligence Sources and Methods." It is my understanding that the comments of the CIA member have already been provided to your Committee.

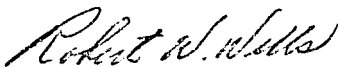
As you will note from the enclosed comments, there appears to be considerable concern among the ICRC members regarding the current language of the guidelines as it relates to the specification of additional periods for the continued classification of information beyond the 30-year limit of Executive Order 11652. Further, there is concern on the part of some that the guidelines may be interpreted by some users as authority to automatically extend the classification of certain information when, in fact, such extension must be made by the head of the department in accordance with the provisions of section 5(E) of the Order. Your attention is invited to the attached Department of Justice opinion which states, "While the proposed USIB guidelines might serve to identify, for the benefit of the Archivist or other persons engaged in classification review, the information which should be brought to the attention of the head of the department for his personal determination in accordance with section 5(E), the guidelines cannot, as a legal matter, serve as a substitute for the determination required under that section." Finally, it appears to be the consensus of the ICRC members that extended classification beyond the 30-year limit authorized by the Executive Order should not be established for extended periods without provisions for intermediate review of the information. For this purpose, periods of 20 years or a maximum of 30 years have been recommended. Such periods are consistent with the maximum limit established by the Executive Order.

OS 8-2604

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It would be appreciated if any revised version of the guidelines could be provided to the ICRC for its consideration prior to promulgation.

Sincerely,



ROBERT W. WELLS
Executive Director

DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

Department of Justice
Washington, D.C. 20530

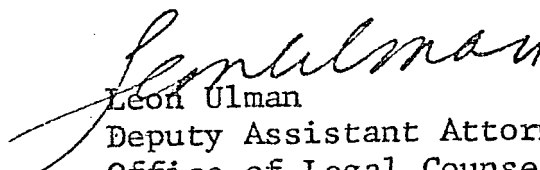
28 MAY 1976

MEMORANDUM FOR ROBERT W. WELLS
Executive Director
Interagency Classification Review Committee

This responds to your request for our views as to whether the proposed USIB "guidelines for declassification or extended classification of information concerning intelligence sources and methods" are consistent with Executive Order 11652, particularly section 5(E) of that Order.

As you know, there has been extended ICRC consideration of this matter in which representatives of this Department have participated. The proposed USIB guidelines represent an effort to establish government-wide guidance with respect to the need for and period of continued classification of certain information concerning intelligence sources and methods beyond the thirty-year period provided for in the Order. What is not clear, however, is what legal effect the guidelines are intended to have. Under section 5(E) of the Executive Order, information or material cannot remain classified beyond thirty years unless the head of the originating department personally determines in writing that the continued protection of specifically identified information or material is essential to the national security. While the proposed USIB guidelines might serve to identify, for the benefit of the Archivist or other persons engaged in classification review, the information or material which should be brought to the attention of the head of the department for his personal determination in accordance with section 5(E), the guidelines cannot, as a legal matter, serve as a substitute for the determination required under that section. Certain language in the guidelines suggests that the guidelines are intended to be legally binding for the purposes of section 5(E), or at least so if

approved by the head of the department concerned. In our view, the guidelines cannot, consistent with the Order, have this effect.


Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

COMPTROLLER

(Administration)

15 DEC 1975

MEMORANDUM FOR Acting Executive Director
Interagency Classification Review Committee

SUBJECT: Proposed USIB Guidelines

Reference is made to your memorandum of December 1, 1975, subject as above, wherein you requested our comments on the latest draft of the United States Intelligence Board's (USIB) "Interim Intelligence Community Guidelines for Declassification or Extended Classification of Information Concerning Intelligence Sources and Methods."

In reviewing the draft guidelines transmitted with your December 1 memorandum, we find that the present draft is essentially identical to the one commented on by the Office of the Deputy Assistant Secretary of Defense (Security Policy) in their memorandum of November 18, 1975 addressed to the Committee. The Department's comments on the latest draft of the USIB guidelines which remain substantially the same as those previously furnished, are provided herewith.

In addition to the specific comments in the attachment, there are serious questions about the legality of those provisions of the proposed USIB guidelines which would permit advance determination for continued classification of information in excess of the 30 year time limits prescribed by Executive Order 11652. As you know, the Order requires that the Heads of Departments must make a personal determination for extension of the classification on the 30th anniversary of the origin of the classified information. A formal ruling by the Department of Justice on this point would be in order.

D. O. Cooke

Deputy Assistant Secretary of Defense

Attachment



Comments regarding "Interim Intelligence Community Guidelines for Declassification or Extended Classification of Information Concerning Intelligence Sources and Methods"

1. With respect to the title of the Guidelines, it is recommended that the words "Declassification or" be deleted as the provisions of Executive Order (E.O.) 11652 adequately cover the declassification of all information which is 30 years old without need for further guidance. Such declassification action is automatic in accordance with the terms of the Order. The suggested title change will serve to set the proper perspective for other changes which are suggested below.

2. With regard to the "Introduction" paragraph on page 1, it is pointed out that, in accordance with Section 5(E) (2) of E.O. 11652, the Archivist of the United States must (a) review by the end of the 30th year following the year of its origination, all information classified prior to June 1, 1972 and (b) separate and keep protected only that information which has been specifically identified by the Head of the Department in accordance with Section 5(E) (1) of the Order, i.e., that information which has been personally determined in writing at the end of the 30th year to require continued protection. The period of additional classification is to be as specified by the Head of the Department. Declassification will occur at the end of the 30th year unless a determination was made in the prescribed manner to continue the classification either as essential to national security or because disclosure would place a person in immediate jeopardy. Additionally, Section 9, E.O. 11652, contains no provisions with respect to extending classification. The "Introduction" paragraph should be recast with the above discussion in mind so as to provide guidance relative to intelligence sources and methods which may require protection beyond 30 years.

3. Concerning the second paragraph on page 1 of the guidelines, and in light of the above comments, the words "to declassify" appearing on the third line should be changed to read "with respect to." On lines seven and eight, the words "of the Intelligence Community Department or Agency" should be changed to read "of the Department." Within the DoD, only the Secretaries of Defense, Army, Navy and Air Force may continue classification beyond 30 years. In line 12, the words "may be declassified or which" should be deleted for reasons as stated above. The last two sentences of this paragraph should be deleted (last sentence appears on page 2) and replaced with "The personal approval of the Department Head will be shown as the authority for continued classification." As is indicated above, only

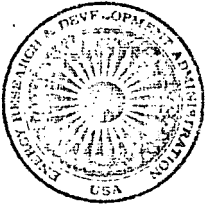
the Head of the Department concerned may approve classification beyond 30 years. The guidelines themselves cannot constitute such authority. Also, as indicated above, no authority other than E.O. 11652 is needed for declassification.

4. Regarding the first full paragraph on page 2, the words "declassification or" should be deleted in accordance with the above comments. The word "may" appearing on line 8 of the paragraph should be changed to "will." If the guidelines are to identify to the Archivist that information which requires continued protection, such guidance must be provided the Archivist for his use. Again the Department Head must personally approve extended classification beyond 30 years, in writing. The guidelines cannot relieve the Head of a Department of the necessity for this action.

5. Concerning the second paragraph on page 3 of the guidelines, it is suggested that the first sentence be modified to include intelligence methods as well as sources. The last sentence of this paragraph should be deleted as it concerns declassification. The guidelines should address only the need to continue classification. A more proper last sentence would indicate that "a formal determination be made as to whether the information was officially disclosed or became so widely disseminated." Given such a determination, declassification occurs immediately because of the event, e.g., official release. This of course is true without regard to the age of the information.

6. The fifth paragraph ("b.") on page 5 of the guidelines should be deleted as it is not germane to the guidelines. The Freedom of Information Act does not justify classification or continuation of classification.

7. With respect to the third full paragraph on page 6, it is recommended that the words "As a general rule," be inserted on line 10 (which line appears on page 7) just ahead of the sentence which begins on this line. The addition would make the paragraph consistent with others which indicate the period of time of extended classification as well as provide a desired degree of flexibility.



UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

December 2, 1975

Received NA-N
UEC 3 1975

Dr. James B. Rhoads, Acting Chairman
Interagency Classification Review
Committee
Room 604
National Archives Building
8th and Pennsylvania Avenue, NW
Washington, D.C. 20408

Dear Dr. Rhoads:

We have reviewed the draft "Intelligence Community Guidelines for Declassification or Extended Classification of Information Concerning Intelligence Sources and Methods." Although we concur in general with the guidelines, we have the following recommended changes:

1. Add an asterisk after "E.O. 11652)" in the fourth line of paragraph 1 with the following footnote at the bottom of the page:

"*See Sec. 8, E.O. 11652 and Sec. 142 of the Atomic Energy Act of 1954, as amended, with respect to information on foreign atomic energy programs."

2. We agree that certain information as to identities of confidential sources and/or organizations, certain technical intelligence methods and certain communications in intelligence and cryptographic security information should be protected beyond the 30-year review period of E.O. 11652. We are, however, concerned with the designation of a specific additional period, i.e., 70, or in one case 20, years. Accordingly, we suggest that the present language in those instances be changed to read as follows:

- a. Lines 11 through 15 of the middle paragraph on page 5:



Dr. James B. Rhoads

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December 2, 1975

"As a general rule information which reveals the true identities of confidential sources shall remain classified for an additional period, the duration of which will be determined at the time of the 30-year period. At that time, the information shall be automatically declassified unless individual arrangements made at the time of the 30-year review require further review after the determined continued period of protection."

- b. Lines 4 through 8 at the top of page 6:

"general rule information which reveals the true identities of confidential sources shall remain classified for an additional period, the duration of which will be determined at the time of the 30-year period. At that time, the information shall be automatically declassified unless individual arrangements made at the time of the 30-year review require further review after the determined continued period of protection. (Reviewers should refer to"

- c. Lines 3 through 6 of paragraph b. on page 6:

"classified for an additional period, the duration of which will be determined at the time of the 30-year period. At that time, the information shall be automatically declassified unless individual arrangements made at the time of the 30-year review require further review after the determined continued period of protection. Documents containing"

- d. Lines 3 through 6, top of page 7:

"All such information shall be protected for an additional period, the duration of which will be determined at the time of the 30-

Dr. James B. Rhoads

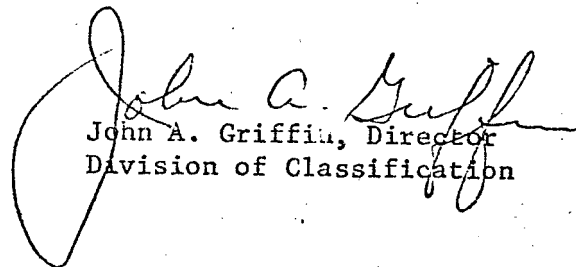
- 3 -

December 2, 1975

year period. At that time, the information shall be automatically declassified unless individual arrangements made at the time of the 30-year review require further review after the determined continued period of protection."

We note that the draft circulated with the November ICRC minutes varied from that approved by USIB Security Committee. We concur with the USIB Security Committee revision subject to the recommendations of paragraph 2 above as appropriate to the USIB Security Committee approved draft.

Sincerely,



John A. Griffin, Director
Division of Classification

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

March 24, 1976

MEMORANDUM FOR: MR. ROBERT W. WELLS
Executive Director
Interagency Classification Review Committee

SUBJECT: Proposed USIB Guidelines

The following is in response to your request for comments on proposed USIB guidelines for the 30-year classification review of information concerning intelligence sources and methods.

Page 1

Label the two sections with Roman numerals to eliminate possible confusion in referencing paragraphs as follows:

I. GENERAL

II. GUIDANCE

Beginning with the second sentence, numbered paragraph 1 should be changed to read as follows:

- When personally approved by the Head of the Intelligence Community Department or Agency concerned, these guidelines are to be used by National Archives and Record Service personnel and by Intelligence Community Department and Agency personnel to "recommend whether the intelligence information originated by or under the cognizance of such Department or Agency should be declassified or remain protected for an additional period. Consistent with Section 5(E) of E.O. 11652 and its implementing NSC Directive, intelligence information deemed to require continued classification will be referred to the appropriate Head of Department or Agency for a personal written determination that continued protection is essential to the national security or that disclosure would place a person in immediate jeopardy. The periods of additional time for continued classification of intelligence shall be the responsibility of the Head of Department or Agency."

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Page 2

Replace the first sentence of paragraph 2 with the following:

- "Guidelines for the declassification or extended classification of information concerning intelligence sources and methods shall be reviewed annually. Any revisions to the guidelines must be personally approved by the heads of the departments and agencies concerned."

Paragraph 3:

- Delete the word "sensitive" before ".... intelligence sources and methods" in the second sentence.
- Delete the third sentence in its entirety.

Under GUIDANCE, 1. GENERAL, paragraph a:

- Delete the word "sensitive" before ".... intelligence sources and methods" in line 4.
- Revise the second sentence to read as follows:
"Documents can be sanitized by deleting that information which must remain classified. This will enable the Archivist to provide sanitized versions of otherwise classified documents to the public provided they are otherwise releasable under the law."

Page 3

Paragraph 1.b:

- Delete the word "unilaterally" in line 5.
- In line 6, change "....consultation with" to "...the approval of..."

Paragraph 1.c:

- Revise the last line of the first sentence to read as follows:
"....have become common knowledge, need no protection beyond the initial 30 years."

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Paragraph 1.d:

- Revise the second sentence to read as follows:

"Such documents should be referred to the receiving U.S. agency or its successor, and if that agency believes they can be declassified, it may seek a determination from the originating government or organization as to the need for protection beyond the initial 30 years."

Page 5

In unlettered paragraph, after paragraph (g):

- Revise the third sentence to read as follows:

"Confidential sources require a greater measure of protection because, in addition to the above criteria, they or others may suffer adverse personal consequences if their identities are disclosed."

- Revise fourth sentence to read as follows:

"As a general rule, information which reveals the true identities of confidential sources requires protection beyond 30 years, and reviewers shall recommend its continued classification for an additional period up to 30 years to the responsible Department or Agency Head for his personal determination. Unless specific arrangements have been made by the Department or Agency Head on an individual basis, all such information shall be declassified automatically at the end of the 60-year period."

Page 6

Change the first complete sentence to read as follows:

- As a general rule, "reviewers shall recommend to the responsible Agency or Department Head for his personal determination" that information which reveals the foregoing "should" remain classified for an additional period "of up to 30 years".

-4-

Paragraph b:

- Change the first sentence to read as follows:

As a general rule, "reviewers shall recommend to the responsible Agency or Department Head for his personal determination that" information which reveals the true names or organization which provide intelligence cover "should" remain classified for an additional period of "up to 30" years.....

- Revise the end of the third sentence to read as follows:
"....need no protection beyond the initial 30 years."
- In the last sentence, replace the word "continual" with the word "continued".


Paragraph c:

- Delete the word "sensitive" from line 5.

Page 7

- Change the second complete sentence to read as follows:

"Reviewers shall recommend to the Head of the responsible Agency or Department that" all such information "should" be protected for an additional period of "up to 30" years at which time it will again be reviewed.


Jeanne W. Davis
Staff Secretary

Attachment

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION



DATE: DEC 31 1975

National Archives and Records Service
Washington, DC 20408

REPLY TO
ATTN OF: James E. O'Neill, NARS

SUBJECT: United States Intelligence Board Guidelines
Interagency Classification Review Committee

After reviewing the draft United States Intelligence Board guidelines, we find that we must question the legality and the appropriateness of establishing automatic extended classification periods for most of the categories of information covered by the guidelines. The guidelines indicate that usually confidential sources should automatically be protected for 70 years beyond the 30 year review, intelligence methods for 20 years beyond the 30 year review, cover organizations for 70 years beyond the 30 year review, and communications intelligence and cryptographic information for 70 years beyond the 30 year review.

These extended periods of classification appear to us to be excessive and not within the intent or spirit of Executive Order 11652. Although there may indeed be some documents which warrant these lengths of continued classification, we do not believe that all such material could justifiably be protected for the periods specified by the guidelines. To maintain needed protection and to conform to the intent of Executive Order 11652, we feel that intelligence documents identified as needing continued protection beyond 30 years should be scheduled for automatic re-review. A 20 year interval between such reviews would seem satisfactory.

In addition, Sec. 4, Specific Guidance -- Communications Intelligence and Cryptography, specifies that at 30 years such information "... if determined to require continued protection will be identified by document, series of documents, or classes of information to the head of the Department or Agency for certification of the need for continued classification." Certification by head of Department or Agency of the need for protection beyond 30 years must be made on a document by document basis. The certification of series of documents or classes of information is not acceptable and would seriously undermine the intent of the certification provisions of the Executive order and the implementing NSC directive.

We feel that these provisions of the guidelines should be changed before adoption by the intelligence community.

James E. O'Neill
JAMES E. O'NEILL
Deputy Archivist



DEPARTMENT OF STATE
THE LEGAL ADVISER
WASHINGTON

December 16, 1975

MEMORANDUM:

TO: Interagency Classification Review Committee

FROM: Horace F. Shamwell, Jr.

SUBJECT: Draft - Intelligence Community Guidelines For
Declassification Or Extended Classification Of
Information Concerning Intelligence Sources And
Methods

The Department of State suggests that the following changes be made in the draft guidelines:

a. The attached paragraph be substituted for the unlettered paragraph on page 5.

b. The following sentence be inserted after the first sentence of paragraph 3b., p. 6 and after the third sentence of paragraph 4a. p. 7:

This information shall be reviewed at 30 year intervals during the time it is classified beyond the initial 30 year period.

c. Add the phrase "As a general rule," at the beginning of the first sentence of paragraph 3b. p. 6 and at the beginning of the third sentence of paragraph 4 p. 7.



DEPARTMENT OF STATE
THE LEGAL ADVISER
WASHINGTON

New Paragraph 2b p. 5

b(1) Conventional sources may require protection to avoid jeopardizing their continued provision of intelligence, or where there are tacit agreements on nondisclosure or changing political circumstances indicate the likelihood of severe repercussions from disclosure. As a general rule, conventional sources do not require continued protection beyond 30 years and may be disclosed within a lesser period.

(2) Confidential sources require a greater measure of protection both because they generally provide intelligence of considerable importance which would likely be lost as a result of disclosure, and because they or others may suffer adverse personal consequences if their identities are disclosed. As a general rule, information which reveals the true identities of confidential sources shall remain classified for an additional period of 70 years and shall, at that time, be automatically declassified unless individual arrangements made at the time of the 30-year review require further review after the 70-year continued period of protection. This information shall be reviewed at 30 year intervals during the time it is classified beyond the initial 30 year period. Documents containing information pertaining to confidential sources may be declassified after 30 years following the date of origin of the material, provided that true names, code names, titles, job descriptions and all other identifying data are excised before declassification.

(3) Information and documents concerning conventional and confidential sources may be declassified earlier than the date for which they are scheduled for declassification if, in the judgment of the Department or Agency concerned, continued protection is no longer warranted.

NOTE: The next paragraph on p. 5 is lettered b. If this change is accepted, it should be changed to c.